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6 | *Attorneys for Plaintiff*
THAT ONE VIDEO ENTERTAINMENT, LLC, a
7 | California limited liability company

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9 | **UNITED STATES DISTRICT COURT**

| **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10

11 | THAT ONE VIDEO | CASE NO: 2:23-cv-02687 CAS (JCx)
ENTERTAINMENT, LLC, a
12 | California limited liability company, |
| [Assigned to the Hon. Stephen V. Wilson;
13 | Plaintiff, | Ctrm 10A]
vs.
14 |
KOIL CONTENT CREATION PTY | **DECLARATION OF WILLIAM**
15 | LTD., an Australian proprietary | **FRANCIS IN SUPPORT OF**
limited company doing business as | **PLAINTIFF'S MOTION FOR**
16 | NOPIXEL; MITCHELL CLOUT, an | **SUMMARY ADJUDICATION**
individual; and DOES 1-25, inclusive,
17 | | [*Motion; Declarations of Jacque Khalil;
Defendants. | *Daniel Tracey, Benjamin Lau, Esq., and John*
18 | | *Begakis, Esq.; Separate Statement of*
| *Undisputed Fact; and [Proposed] Order filed*
19 | | *concurrently herewith*]

20 | | **Hearing**
| Date: September 9, 2024
21 | | Time: 1:30 p.m.
| Dept.: Courtroom 10A (10th Floor)
22 | | 350 W. First Street
| Los Angeles, CA 90012
23 | | Judge: Hon. Stephen V. Wilson

24 | | Action Filed: April 10, 2023
| Trial Date: September 17, 2024

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DECLARATION OF WILLIAM FRANCIS IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY ADJUDICATION

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DECLARATION OF WILLIAM FRANCIS

2   I, William Francis, declare and state as follows:

3   1.   I am an individual currently residing in the County of Collin, State of

4 Texas, and am over 18 years of age. I hereby submit this Declaration in support of the

5 Motion for Summary Adjudication (the "Motion") filed by Plaintiff THAT ONE

6 VIDEO ENTERTAINMENT, LLC, a California limited liability company

7 ("Plaintiff") against Defendants KOIL CONTENT CREATION PTY LTD., an

8 Australian proprietary limited company doing business as NOPIXEL ("NoPixel")

9 and MITCHELL CLOUT, an individual ("Clout") (collectively, "Defendants"). I

10 know all of the following facts of my own personal knowledge and, if called upon

11 and sworn as a witness, could and would competently testify thereto.

12   **A.   Expert Credentials and Qualifications**

13   2.   I am a software engineer with a Bachelor of Applied Science degree

14 from the University of North Texas. I am also a certified Amazon Web Services

15 Solutions Architect, a certified Amazon Cloud Practitioner, and a certified Agile

16 Game Product Owner.

17   3.   I have over twenty (20) years of experience in commercial software

18 development, having worked for some of the most recognizable consulting firms in

19 the world, including IBM, Accenture, and Ogilvy. During my tenure with these firms,

20 I was exposed to millions of lines of source code at fortune 500 companies, and led

21 efforts that included building the software that streamed the 2016 Olympics and U.S.

22 presidential debates, the first mobile ordering app for a best-selling fast-food chain,

23 and a global marketing application for the most iconic soft drink on the planet.

24 Specifically in the video game industry, I have led efforts on gaming titles for Nexon

25 (one of the world's 10 largest video game companies), the National Basketball

26 Association, and Nickelodeon. In 2013, I also single-handedly wrote a mobile game

27 that hit #1 on Amazon for a day.

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4.   I have been awarded a patent for a novel, real-time automated technique for managing access to a virtual private network ("VPN"), which patent was acquired by IBM. I am also the author of over 200 professional articles for journals that include Forbes, TechRepublic, and CBS Interactive.

5.   Currently, I am Director of Game Development at a Web3 gaming studio, where I lead a team of engineers and also perform hands-on game development. A copy of the curriculum vitae is attached hereto as Exhibit "G" and incorporated herein by this reference.

B.   Scope of Expert Testimony

6.   I have been retained as an expert in this dispute to testify to: (1) the similarities between the code originally created by Daniel Tracey for the videogame server (the "NoPixel Server") established by Defendants to run the "open world" videogame entitled "Grand Theft Auto V" (the "Game"), and the code used by Defendants to operate the NoPixel Server; and (2) the fact that the code originally created by Mr. Tracey and used by Defendants to operate the NoPixel Server allows for an individual to join and play on the NoPixel Server without being required to complete the standard application process at Defendants' website located at <https://dashboard.nopixel.net> (the "Website"), which includes accepting the terms of service set forth thereon.

7.   On or about June 17, 2024, I was designated as an Expert Witness in this matter without objection. At that time, I also provided an Expert Report, which was supplemented without objection on July 24, 2024 (the "Report"). Because of Defendants' concerns regarding the confidential nature of some of the source material referenced in my Report, I have also prepared this Declaration, which includes a summary of my conclusions without specific references to source material. Everything contained herein, however, can be found in my Report, which complies in all respects with Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

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DECLARATION OF WILLIAM FRANCIS IN SUPPORT OF PLAINTIFF'S
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C.   **Scope of Review and Tools Used**

8.   To facilitate my search for common code between the code originally created by Mr. Tracey and the code used by Defendants to operate the NoPixel Server, I was provided with the following evidence to examine:

- Read-only access to Mr. Tracey's approximately twenty thousand lines of code, stored in a repository (i.e., a storage location for code and other software development assets) on GitHub (i.e., a cloud-based service that packages up tools to help developers store and manage code, track changes to code being developed, and collaborate on development projects), and located at <https://github.com/DWJFT/NOPIXEL-INFRA>   ("Tracey's Repository");

- Read-only access to Defendants' approximately six million, three hundred thousand lines of code, stored in a total of forty-five (45) different repositories on Github, and located at <https://github.com/orgs/ITSKOIL/repositories>   ("Defendants' Repositories");

- Two spreadsheets provided by the parties regarding the list of servers that make up the NoPixel Server, and the amount of code contained on those servers; and

- A publicly-accessible link to log onto the NoPixel Server, located at <https://dashboard.nopixel.net/steam/login>.

9.   In conducting my review and analysis, I focused my search on finding similarities between Mr. Tracey's code and code stored on Defendants' Repositories that made up the functional, infrastructure and operational-related aspects of the Game as run on the Nopixel Server ("Backend Code"). Defendants' Repositories include other code that makes up the gameplay elements of the Game ("Game

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DECLARATION OF WILLIAM FRANCIS IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY ADJUDICATION

1   Code"), but I did not include Game Code in my review because it is my

2   understanding that Plaintiff does not make any claim to ownership of any Game Code

3   in Defendants' Repositories that Mr. Tracey may have written.

4   10.   My approach to reviewing and evaluating the similarities between the

5   code in Mr. Tracey's Repository and the code in Defendants' Repositories involved a

6   combination of manual (i.e., expertise based) evaluation, for qualitative analysis, and

7   automated (i.e., tool based) evaluation, for quantitative analysis. The following tools

8   were used to assist in the analysis of the code and respective repositories:

9   • Cloc (<https://github.com/AIDanial/cloc>);

10   • Git-quick-stats (<https://fig.io/manual/git-quick-stats>);

11   • Fork (<https://git-fork.com/>);

12   • GitHub-Insights (<https://bit.ly/4blgBju>); and

13   • Codeleaks (<https://copyleaks.com/codeleaks>).

14   **D.   <u>Findings and Conclusions</u>**

15   11.   Based on my review and analysis, as of December 15, 2022, Mr. Tracey

16 was the primary contributor to the Backend Code found on Defendants' Repositories,

17 contributing to **Eighty Percent (80%)** of the relevant code located thereon. After

18 December 15, 2022, the code on Defendants Repositories continued to evolve, but as

19 of March 14, 2023 (i.e., roughly ninety (90) days later), Mr. Tracey's contributions

20 still accounted for **Seventy-One Percent (71%)** of the Backend Code on

21 Defendants' Repositories. Additionally, as of May 15, 2024, Mr. Tracey's

22 contributions still accounted for **Forty Percent (40%)** of the Backend Code

23 Defendants' Repositories. I should also note that the fact that around 40% of the

24 Backend Code is still attributed to code Mr. Tracey wrote does not imply that the

25 other 60% of Mr. Tracey's original contributions have been re-written or removed. It

26 simply means that the NoPixel Server does more today that it did two years ago,

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1   which shows the continued importance of Mr. Tracey's original contributions to the

2   current day-to-day operations of the NoPixel Server.

3   12.   I am aware that Defendants' designated rebuttal expert, Garry Kitchen,

4   has provided a rebuttal report concluding that Mr. Tracey's contributions actually

5   only account for 0.57% of all of the code located on Defendants' Repositories. Mr.

6   Kitchen comes to this conclusion by comparing Mr. Tracey's code against both the

7   Backend Code and Game Code stored on Defendants' Repositories. However, I see

8   no logical reason for evaluating Mr. Tracey's contributions against a combination of

9   both types of code because Plaintiff is not claiming any ownership in Mr. Tracey's

10   contributions to the Game Code – only the Backend Code.

11   13.   From my review and analysis of both sets of Backend Code, I can also

12   represent that, as the primary contributor to the Backend Code found on Defendants'

13   Repositories, Mr. Tracey contributed to the creation of multiple important service

14   features for the NoPixel Server, including: (i) user registration and age verification;

15   (ii) login; (iii) notification management; (iv) programmatic payment processing for

16   various in-Game monetization avenues; and (v) various security features.

17   14.   I am aware that Defendants' rebuttal expert, Mr. Kitchen, has attempted

18   to discredit the above conclusion on the basis that Mr. Tracey didn't actually "build"

19   any of the listed service features from scratch. For example, Mr. Kitchen spends a

20   significant amount of time in his rebuttal report claiming that the NoPixel Server

21   utilizes an already established third party payment processor, called Tebex, that was

22   not built by Mr. Tracey. But this opinion is flawed because it incorrectly presumes

23   that other developers would build such features from scratch. In reality, modern video

24   games, like the Game, rely on many external, third-party systems to function. But, in

25   order for a game like the Game to use any of these external third-party systems, one

26   or more developers must develop code that effectively connects the game to such

27   systems through application programming interfaces (or "APIs"). Because of the

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     DECLARATION OF WILLIAM FRANCIS IN SUPPORT OF PLAINTIFF'S
                  MOTION FOR SUMMARY ADJUDICATION

1   work that was necessary for Mr. Tracey to create backend code that effectively and

2   elegantly connected various APIs, like the Tebex API, to the NoPixel Server to allow

3   systems, like payment processing, to function effectively, it is accurate to say that

4   Mr. Tracey substantially contributed to the "creation" of such systems *on or for the*

5   *NoPixel Server.*

6   15.   Finally, from my review and analysis of the Backend Code, I can

7   conclude that it is possible, and in more than one way, to join and play on the

8   NoPixel Server without having to visit the Website, register for an account, and

9   accept the terms of service. Via one of these alternative ways, an administrator for the

10   NoPixel Server – using an internal facing user interface – can create an account on a

11   player's behalf, and later modify that account.

12   16.   Furthermore, it is my experience that user interfaces are not typically

13   developed for functionality that is used infrequently. For a developer to develop code

14   to allow software to function in a particular way, the cost of continuing to do things

15   manually must outweigh the time it would take to build a user friendly, automated

16   way of completing the relevant task. Thus, the fact that a user interface exist within

17   the NoPixel Server for administrators to create and modify player accounts leads me

18   to believe that this is not an uncommon practice.

19   I declare under penalty of perjury under the laws of the State of California that

20   the foregoing is true and correct, and that this Declaration was executed on August

21   12, 2024, at Parker, Texas.

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24   WILLIAM FRANCIS

25   William J Francis

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**DECLARATION OF WILLIAM FRANCIS IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a "Notice of Electronic Filing" automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 12, 2024   By: /s/ John Begakis
                                                    John M. Begakis

CERTIFICATE OF SERVICE

EXHIBIT "G"

William J Francis

Engineering Servant Leader

✉ authorwjf@gmail.com

📞 (214) 505-5009

📍 Dallas, TX

in https://bit.ly/3O6ULMZ

ABOUT

With a passion for gaming and creative problem solving I have been lucky enough to work on gaming titles with the likes of Nickelodeon, the NBA and most recently Nexon. I am a patented inventor and have over 100 professional publication credits. I have managed teams as large as thirty and projects with multi-million dollar budgets.

EDUCATION

BAS, University of North Texas

PORTFOLIO

Publications: https://bit.ly/3Q9EqKf
Games: https://williamjfrancis.com
Patent: https://bit.ly/3dSsbLo

CERTIFICATIONS

AWS Certified Architect
AWS Certified Practitioner
Scrum Certified Product Owner
SAFe Certified Agilist

VETERAN

United States Army

VOLUNTEER

Chairman, Collin College
Web & Mobile Curriculum Advisory

Summary

Proven hands-on technology leader in the video game industry experienced building happy, high performing engineering teams.

Success Stories

☐ While at **Nexon** I managed **feature development**, **tier-3 support** and **live ops** for a **top grossing mobile game**. For over 12 months my team ensured round the clock operations with **zero down time**. By identifying and prioritizing significant tech debt I was directly responsible for moving from quarterly to **monthly releases** and a **> 30% gain in team velocity**.

☐ Consulting with **Nickelodeon** I architected a strangler-pattern for moving **two native-mobile code bases to a single Unity app**. Building a POC that proved out seamless switching between native screens and Unity scenes, the team was able to continue feature development while transitioning tech stacks **without adding headcount.**

☐ Working with two of the biggest players in the **NBA** I was able to assess and **retool engineering processes** on a web-based game that was in serious danger of missing the launch date. By implementing **devops strategies**, **buy-vs-build analysis**, and some **hands-on development**, the game landed **on time and under-budget.**

Experience

2024 - Present	Infinigods	Director of Engineering
2022 - 2024	Pixelberry Studios	Engineering Manager
2020 - 2022	Raytheon Intel & Space	Principal Digital Strategist
2018 - 2020	ENO8	Chief Architect
2017 - 2018	Accenture	Solutions Architecture Mgr
2013 - 2017	Bottle Rocket Studios	Senior Engineering Mgr
2012 - 2013	Timberhorn IT	Mobile Architect
2007 - 2012	IBM's SoftLayer	Lead Systems Engineer
2006 - 2007	Media Cart	Sr Software Engineer
2004 - 2006	NCR	Software Engineer
1997 - 2004	Linx Data Terminals	Technical Support Mgr

Core Competencies

Technology:
Unity 2D, Solar 2D, Box 2D, Android, iOS, C#, C++, Java, Lua, Lambda, ElasticBeanstalk, Dynamo, RDS, S3, Route-53, Cloudfront, SQS, SNS, IoT Gateway, API Gateway, IAM, Cognito, Firebase, Gitlab, Gitflow, Bitrise

Project & Product Management:
Agile Coach, Scrum Master, Roadmaps, Design Thinking, Feature One Pagers, A/B Testing, Analytics, Campaigns, Estimating, Budgeting, P&L

Leadership
Managing Through Managers, Managing ICs, Leading Cross-Functional Teams, Comfortable With C-Suite, Engineering COE, Mentoring